59

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ.
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Writ Petition (C) No. 6181 OF 2006

PETITIONER Mr. Nagesh Penchalwar S/o Shri Manohar Penchalwar, aged 28 years, R/o M-316, Dindayal Upadhaye Nagar, Raipur, Chhattisgarh

Versus

RESPONDENT State Bank of India, Phaphadih Branch, Raipur, Chhattisgarh Through Authorized Officer cum Manager

---

Present : Shri Abhijit C Thakur, counsel for the petitioner.

ORAL ORDER
(Passed on 10-11-2006)

The following oral order of the Court was passed by

S.R. Nayak, CJ.

This writ petition is directed against the refusal of the Debts Recovery Tribunal (for short "the DRT"), Jabalpur to grant ad-interim injunction sought by the petitioner herein in an application filed under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"). The following is the reason stated by the DRT to refuse ad-interim injunction:

> "Having heard the Ld. Counsel for applicant and after going through the records it appears that bank has taken possession u/s 13(4) of Securitisation Act in the month of August 2005. As per Section 17 of Securitisation Act, application is to be filed within 45 days from the date of measures taken u/s 13(4) of Securitisation Act. On drawing attention the point of limitation Shri Thakur has submitted that delay may be

condoned. Applicant has not filed any application for condonation of delay. Not only this applicant has filed instant application on 9-10-06 and the application for urgent hearing is filed on 10-10-2006, whereas auction is scheduled for tomorrow i.e. 12-10-2006. It means the applicant any how wants ex parte order in their favour.

It will not be out of place to mention here that alleged agreement of construction of house is between the applicant and the Builder and the Bank is not the party to the said agreement. More so amount cannot be disbursed to the builder without the consent/authority of the applicant, therefore, contention of applicant that bank has disbursed amount in connivance with the builder cannot be prima facie accepted. In the facts and circumstances of the case, I do not find strong prima facie case to grant exparte ad interim relief, therefore, prayer is rejected".

Furthermore, we are told that as proposed the auction was conducted on 12-10-2006. The discretion exercised by the DRT could not be condemned as arbitrary or unreasonable. In the facts and circumstances of the case, no case is made out to interfere with the discretion exercised by the DRT. The writ petition is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice

Sybbm